

Let insurance market regulate police misconduct

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Governor Susana Martinez recently voiced support for granting legal immunity to New Mexico law enforcement officers for their actions in the line of duty, a proposal which undermines rule of law by shielding cops from accountability.

In today's hyper-politicized environment, the market can do more to regulate police misconduct than politics.

Taxpayers should not be forced to pay hefty settlements as a result of an officer's wrongdoing. Instead, individual police officers should be required to hold liability insurance ensuring that rogue cops internalize the cost of their malpractice.

As evidence that police are often shielded from accountability, look no further than the recent decision out of the 10th Circuit Court of Appeals that sided with a former New Mexico State Police Officer who opened fire on a minivan full of children in late 2013.

When Oriana Farrell was pulled over for speeding, she refused to sign the citation and drove away. The officer called for backup and pulled her over shortly thereafter. Her children jumped out of the van and a hectic situation ensued.

The original officer busted her rear window with his baton, at which point she fled the scene again and a different officer fired three shots at Oriana and her five children.

It is evident from the video that the situation was frantic. However, it is also obvious that Oriana was not putting anybody else in danger. Though no one was injured, the use of force in this situation was unwarranted and unnecessarily endangered the public.

Imagine a private citizen firing a pistol at a van full of people as they flee the scene of an altercation. That person would be arrested and charged with aggravated assault or attempted murder. But the court held that Oriana cannot recover any damages, effectively ruling that the officer did nothing wrong and justifying the officer shooting at a van full of children. Police are held to a much lower standard than private citizens which should enrage anyone concerned about living in a free society.

The officer who shot at the van full of children was not held personally accountable due to the dubious legal principle of qualified immunity.

Qualified immunity shields public officials “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights.”

A recent opinion piece by Cato Institute policy expert Clark Neily argues that the Supreme Court should rethink qualified immunity. If Neily is correct, it is “a blatant act of judicial policy making” and has no legislative or public policy justification.

He argues that the courts’ standard misleads police about the constitutionality of their actions.

On a local level, nothing can be done to undo the Supreme Court's interpretation of this doctrine. However, local policy makers can change the incentives for law enforcement by requiring that officers purchase their own liability insurance. Other professionals, such as doctors and lawyers, do this already; there is no reason for police officers to be held to a lower standard.

Requiring liability insurance would significantly alter the incentives for officers and departments alike. If an officer is routinely violating rights, or injuring those they are sworn to protect, the insurance company would mitigate their risk by raising their premium. If an officer’s insurance policy routinely has to settle payments, the officer may become uninsurable and would not be allowed to practice policing.

As Washington Post investigative reporter Radley Balko wrote, there is already evidence of the insurance industry requiring better policing through “better training, better use of force policies, better screening in the hiring process, and even the firing of bad cops.”

Instead of following the governor’s lead and granting police impunity, local policy makers should make police more accountable by requiring officers to hold liability insurance.